

JUDGE KARAS

11 CIV 5964

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANTAYA CALDER

Plaintiff,

COMPLAINT

v.

ARS NATIONAL SERVICES, INC.

Defendant.  
-----X

FILED  
U.S. DISTRICT COURT  
S.D. OF N.Y.  
2011 AUG 25 AM 11:17

### **INTRODUCTION**

1. Plaintiff brings this action to secure redress from unlawful credit and collection practices engaged in by defendant ARS National Services, Inc. ("ARS"). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

2. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements in connection with the collection of a debt. Collectors are also required to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331.

4. Venue and personal jurisdiction in this District are proper because:

- a. Plaintiff resides within this district;
- b. Defendant does business within this District.

5. Defendant, ARS, is a corporation with offices at 201 West Grand Ave. in Escondido, California, 92025, whose principal business is the collection of debts allegedly owed to others.

6. Defendant is a “debt collector” as defined in the FDCPA.

7. Defendant is a member of The Association of Credit and Collection Professionals.

8. Defendant is licensed by the New York City Department of Consumer Affairs as a debt collector.

### **FACTS**

9. On a date within the applicable statute of limitations, defendant left a voice message for plaintiff.

10. The plaintiff is a “consumer” as defined by the FDCPA.

11. The voice message is a “communication” as defined by the FDCPA.

12. In making this phone call, defendant sought to collect a “debt” as defined by the FDCPA because the charges it attempted to collect arose from personal, family or household purposes and not from business purposes.

13. The message left on the voice mail belonging to the plaintiff was as follows: “Hi this message is for Antaya Calder. This is Ken Schiller calling from ARS National. I’d appreciate a call back as soon as possible. This is regarding an important business matter. My number is 1-866-519-3421 extension 5424. When calling back Antaya, please reference your file and that number is 22365272. Thank you and I look forward to your call.”

### **VIOLATIONS ALLEGED**

14. Defendant's conduct violates 15 U.S.C. §§1692 and 1692e.

15. Section 1692e provides: A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

**§ 1692e. False or Misleading Representations**

11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

16. Defendant violated the above provision of the statute because the voice message did not contain the above required notice.

17. Defendant is liable to the plaintiff for statutory damages pursuant to 1692k.

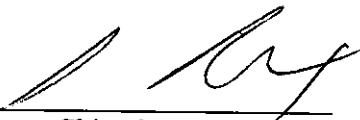
**WHEREFORE**, the Court should enter judgment in favor of plaintiff and against the defendant for:

- (1) Statutory damages;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.

Dated: New York, New York  
August 23, 2011

The Law Offices of Shimshon Wexler, PC

By: \_\_\_\_\_



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